

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOWELL SACHNOFF and ADAM R.)	
CHISS,)	
)	
Plaintiffs,)	No. 07 C 6888
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	Judge Holderman
DEFENSE,)	
)	
Defendant.)	

**DEFENDANT'S MOTION FOR AN EXTENSION
OF TIME TO PRODUCE RESPONSIVE DOCUMENTS**

The Department of Defense, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, moves to extend time to produce the remaining responsive documents from September 10, 2008, to October 22, 2008, and in support of this motion, states as follows:

1. This is an action for declaratory and injunctive relief under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to order the production of agency records pertaining to three aliens detained as enemy combatants at Guantanamo Bay, Cuba, and represented by plaintiffs, Lowell Sachnoff and Adam R. Chiss.

2. The Department of Defense has identified 4,086 pages of documents responsive to plaintiffs' FOIA request. During a meet-and-confer conference, the parties agreed to a September 10, 2008, deadline to produce all outstanding responsive documents.

3. Since February 2008, when this case was reassigned to this court based on its relatedness to *Bronte v. Department of Defense*, No. 07 C 3114, the Department of Defense has

produced 2,447 pages of responsive documents. Of these responsive documents, 899 pages have been produced since the parties' last status conference on July 15, 2008.

4. There are 1,656 pages of responsive documents remaining, 95 of which will be processed by the September 10, 2008, deadline. The Department of Defense expects another 638 pages to be processed by this time, but cannot guarantee this based on existing caseloads. Consequently, defendant now seeks a six-week extension of time to process the remaining 1,561 pages for the following reasons:

a. The remaining 1,561 pages consist of attachments submitted to the Combatant Status Review Tribunal (CSRT) and Administrative Review Boards (ARBs). The Office of the Administrative Review of the Detention of Enemy Combatants (OARDEC) is the Department of Defense component responsible for the CSRT and ARBs. The majority of these attachments are duplicates of intelligence reports included in the already produced records, but also include unprocessed documents from the FBI, Criminal Investigative Task Force, and possibly other agencies. The count represents the total number of CSRT and ARB pages for all three detainees, minus any pages relating to ISN 049 that have already been produced.

b. The Policy, Appeal, and Litigation (PAL) Branch of the Freedom of Information Division is responsible for all litigation processing for the Office of the Secretary of Defense and the Joint Staff.

c. PAL places each case in a priority queue based on existing court-deadlines for production and dispositive motion due dates. PAL received the first set of the 1,561 pages of outstanding documents from OARDEC at the beginning of June, and the last set in mid-July. Both PAL and the Department of Defense Office of the General Counsel (OGC) began processing these documents at this time; however, shortly after this documents previously referred to agencies in other

cases with earlier court dates were returning to PAL. These other cases were placed in the processing queue ahead of the documents in this case. Because the primary criterion for placement of a case's documents within the processing queue at PAL is the court-imposed due date, it is not unusual for a particular case's position in the queue to change.

d. PAL initially requested the undersigned AUSA seek 120 days to process the 1,561 pages, but agreed to a 90 day processing period because of this court's request that we make every effort to "catch this case up" to the *Bronte* case. Unfortunately, the workloads from the other cases created problems in processing the 1,561 pages of outstanding documents in a timely fashion. PAL failed to clearly advise the OGC of the position of these documents in the queue, or request an extension until August 14, 2008, when the case reappeared at the top of the priority processing list. Because of this, the OGC did not advise the undersigned AUSA of any processing delay until August 14, 2008, despite weekly status communications. On August 15, 2008, a request was submitted to process these remaining documents on an expedited basis. The undersigned AUSA also called opposing counsel, Adam R. Chiss, on August 15, 2008 to inform him of the delay.

5. The Department of Defense respectfully requests a six-week extension of time from September 10, 2008, to process the remaining pages. OARDEC has already located the responsive CSRT and ARB documents and conducted an initial review, and submitted the documents to PAL and OGC. PAL reviewed the documents for consistency and to determine if any documents originated with other agencies. Those documents originating with other agencies have been separated and sent back to their home agencies, which are responsible for processing the documents. Some of these agencies will respond directly to plaintiffs, and some will respond to PAL with their release recommendations. After it receives the responses, PAL will coordinate with OGC and review the

documents for consistency and accuracy. OGC will then submit the documents to the undersigned AUSA so that they can be provided to plaintiffs.

The Department of Defense is requesting a six-week extension of time from the existing production deadline because providing the documents any earlier will be logistically difficult, as all the *habeas* cases are also being processed on an expedited basis, and pushing this case to the front of the queue will unfortunately create a corresponding delay in the displaced case.

WHEREFORE, the Department of Defense requests a six-week extension of time to produce responsive documents from September 10, 2008, to and including, October 22, 2008.

Respectfully submitted,

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